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Before the
Federal Communications Commission
Washington, DC 20554

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MAY - 8 1998

In the Matter of

Implementation of the
Telecommunications Act of 1996:

CC Docket No. 96-115

Telecommunications Carriers' Use of
Customer Proprietary Network
Information and Other Customer
Information

**GTE Comments on
CTIA Request for Deferral and Clarification**

GTE Service Corporation and its affiliated domestic telecommunications,¹
wireless,² and long distance³ companies (collectively "GTE"), hereby respond to the
Commission's May 1, 1998, Public Notice with their comments on the Request for
Deferral and Clarification of the Cellular Telecommunications Industry Association (the

¹ GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc. and GTE Communications Corporation.

² GTE Wireless Incorporated and GTE Airfone Incorporated.

³ GTE Communications Corporation, Long Distance division.

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“CTIA Request”). The Notice also requests comment on GTE’s Petition for Temporary Forbearance or, in the Alternative, Motion for Stay (the “GTE Petition”).

Both GTE and CTIA are concerned by the immediate adverse effect on the public interest of certain provisions in the Commission’s *Second Report and Order*.⁴ Both seek a postponement of a limited number of provisions in the order pending further development of the record. The purpose of these comments is to indicate GTE’s support for the relief requested by CTIA, and the need to grant the broader relief requested in the GTE Petition.

CPE and Information Services. First, for the reasons given in the GTE Petition, GTE supports CTIA’s request that the Commission defer its rules that require customer approval before a CMRS provider may use CPNI to market mobile equipment and information services. Indeed, broader relief is necessary, as the GTE Petition shows, to defer the rules with respect to CPE needed to introduce advanced wireline services and with respect to voice mail, store-and-forward, and short message services that are used integrally with wireline services.

Customer Retention and Win-back. Second, GTE notes that the CTIA Request supplies additional, cogent reasons (beyond those discussed in the GTE Petition) why the anti-win-back rule is contrary to the statute and was unlawfully adopted. GTE agrees with CTIA that the Commission’s anti-win-back rule does not

⁴ Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115 (released February 26, 1998), 63 Fed. Reg. 20326 (April 24, 1998) (the “Order”).

apply to efforts by a carrier to retain an existing customer. Indeed, GTE considers that conclusion to be self-evident from the language of the rule itself. However the clarification requested by CTIA would be helpful to remove potential uncertainty caused by the reference to a "soon-to-be-former" customer in the *Order*.

Customer Name and Billing Address. Third, GTE supports CTIA's request for the Commission to clarify that CMRS customer name and billing address are not CPNI. Even if the Commission believes that the language of the statute includes customer name and billing address within the definition of CPNI,⁵ the Commission should forbear from applying the language as so interpreted. Such forbearance meets all the criteria of Section 10 of the Act. (1) Restricting a company's use of CMRS customer billing name and address for marketing any other product or service is not required to ensure reasonable, non-discriminatory rates and practices for telecommunications service. Such use would have no effect whatever on CMRS service rates or practices. Competition in CMRS markets will assure that rates are reasonable and non-discriminatory.⁶ (2) It is not necessary to restrict use of CMRS customer name and address to protect consumers. Consumers will reasonably expect their CMRS provider, like any other company, may use its customer lists to inform them of other products and services. Section 227 of the Act recognizes that customers expect marketing calls from

⁵ The CTIA Request demonstrates that section 222 cannot properly be read to include customer name and billing address.

⁶ See generally *Competition in the Commercial Mobile Services, Second Report*, FCC 97-75 (released March 25, 1997); Elizabeth Jensen, *Yakking It Up: For Wireless Services, Talk Is Cheap, but Competition Rages*, Wall St. J. April 27, 1998.

companies with whom they have “an established business relationship” and provides an effective remedy for any customer who does not wish to receive marketing calls.

Moreover, in a competitive marketplace, CMRS providers will not use their customer lists in a manner that will alienate their customers. (3) The use of CMRS customer name and billing address is consistent with the public interest generally and, in particular, will promote competitive conditions by enabling CMRS carriers to reach their customer base as they expand into competitive local exchange markets.

Scope of Relief. Fourth, CTIA requests a 180 day deferral of the rules as they apply to CMRS, whereas GTE requests temporary forbearance or a stay—applicable to any carriers who may be affected—until the Commission can develop the record and take action. As indicated in the GTE Petition, certain of the rules also unreasonably impact wireline carriers, and any relief should apply to all carriers equally. This would be consistent with the *Order’s* conclusion “that Congress did not intend to, and [the Commission] should not at this time, distinguish among carriers for the purpose of applying section 222(c)(1). Based on the statutory language, it is clear that section 222 applies to all carriers equally”⁷ GTE submits that an “as long as it takes” deferral is more appropriate to avoid the necessity for a further request for deferral, if the issues cannot be resolved within 180 days. If the Commission prefers to establish a specific date, GTE respectfully requests that the Commission commit to resolving these issues within that time-frame and provide its staff with the resources to do so.

⁷

Order ¶ 49.

Statute vs. Rules. Finally, CTIA requests only a deferral of the effective date of the rules, whereas GTE requests a temporary forbearance of parts of section 222 and/or a stay of the rules, as may be appropriate.⁸ GTE believes that CTIA's deferral request is well taken and that it can and should be granted by the Commission. However, if the Commission is concerned regarding its authority to grant deferral of certain aspect of the *Order* and only defers the effective date of the rules without granting forbearance, GTE requests that as a minimum the Commission state that it will not enforce these aspects of section 222 against carriers who use CPNI in good faith pending an ultimate resolution.

⁸ GTE petitions for a temporary forbearance because the Commission concluded that the rules of concern here follow from section 222 as a matter of statutory construction, although GTE believes that the Commission is mistaken in its reading of the Act and will urge the Commission to reconsider its interpretations. See e.g., *Order* ¶¶ 32 (telecommunications services), 75 (CPE and Information Services), 85 (win-back).

Respectfully submitted,

GTE SERVICE CORPORATION, AND ITS
AFFILIATED DOMESTIC TELECOMMUNICATIONS ,
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A handwritten signature in black ink, appearing to be "R. Michael Senkowski", written over a horizontal line.

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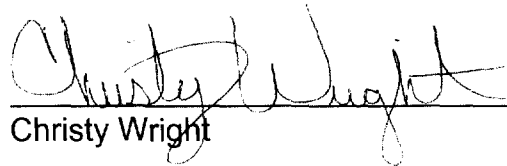
May 8, 1998

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 1998, I caused copies of the foregoing Comments on CTIA Request for Deferral and Clarification to be mailed via first-class postage prepaid mail to the following:

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